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FILED

SEP 24 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA

11 Plaintiff,

12 vs.

13 MARK JACOBSON

14 Defendant.

No: CR 07-0568

**APPLICATION FOR PERMISSION TO
ENTER PLEA OF GUILTY;**

ORDER ACCEPTING PLEA
FRCrP, Rules 10 and 11

Judge: Hon. Marilyn Hall Patel

15
16
17
18 The defendant represents to the Court:

19 1. My full true name is Mark Spencer Jacobson. I am 32 years of age. I have
20 gone to school up to and including receiving a Bachelor of Arts from Tufts University.
21 My most recent occupation has been a principal at the Barlow Group. I request that all
22 proceedings against me be in my true name.

23 2. I am represented by a lawyer; his name is Thomas F. Carlucci.

24 3. X I am proficient enough in English to read the above and have
25 read and fully understand it.

26 _____ I am not proficient enough in English. I speak and understand
27 _____ which is my native language. The above was read to me in
28 _____ and I fully understand it.

APPLICATION FOR PERMISSION TO ENTER PLEA OF GUILTY; ORDER ACCEPTING PLEA
CASE NO. CR 07-0568

gml

4. I received a copy of the indictment/information (as used in the Application, the term indictment includes information) before being called upon to plead. I have read the indictment or an interpreter who speaks _____ read it to me, and I have discussed the indictment with my lawyer. I fully understand every charge made against me. I understand these charges to be:

A single count of conspiracy to misappropriate, receive, possess, and transmit trade secrets; gain access to a protected computer in excess of authorization and without authorization; and trafficking in a password allowing unauthorized access to a protected computer.

5. I told my lawyer all the facts and circumstances known to me about the charges made against me in the indictment. I believe that my lawyer is fully informed on all such matters.

6. I know that the Court must be satisfied that there is a factual basis for a plea of "GUILTY" before my plea can be accepted. I represent to the Court that I did the following acts in connection with the charges made against me in Counts:

I DOWNLOADED PROPRIETARY INFORMATION FROM THE COMPUTER DATABASE OF MY FORMER EMPLOYER, KORN/FERRY, FOR PURPOSES OF ASSISTING A NEW COMPETING BUSINESS. I ENGAGED IN THESE ACTS EITHER IN EXCESS OF MY AUTHORIZATION (WHILE WORKING AT KORN/FERRY) OR WITHOUT AUTHORIZATION (AFTER MY DEPARTURE FROM KORN/FERRY).

(In the above space, defendant must set out in detail in his/her own

handwriting what he/she did. If more space is needed, add a separate page.)

7. My lawyer has counseled and advised me on the nature of each charge, all lesser included charges, all penalties and consequences of each charge, all possible defenses that I may have in this case, and the constitutional rights I am waiving.

8. I understand that my constitutional rights are as follows:

- A. The right to a speedy and public trial by jury;
- B. The right to see and hear all witnesses called to testify against me;
- C. The right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor;
- D. The right to the assistance of a lawyer at all stages of the proceedings, and if I cannot afford one, to have the court appoint one

- 1 to represent me without cost to me or based upon my ability to pay.
- 2 E. The right to take the witness stand at my sole option, and if I do not
- 3 take the witness stand, no inference of guilt may be drawn from such
- 4 failure;
- 5 F. The right against self-incrimination;
- 6 G. The right to appeal from an adverse judgment;
- 7 H. The right to raise available defenses, including defenses which may
- 8 be raised by motion.
- 9 I. The right to appeal my sentence as limited by my plea agreement.
- 10 J. If plea entered pursuant to a plea agreement, the right to discovery of
- 11 materials in the possession of or available to the government,
- 12 including materials that may be exculpatory, and which I may
- 13 receive in the future, but have not yet received because of entering
- 14 into a plea agreement.

9 9. I know that I may plead "NOT GUILTY" to any offense charged against
10 me.

11 10. I know that if I plead "GUILTY", I am giving up all of the rights
12 enumerated in paragraph 8, and that there will be no trial either before the Court or jury.

13 11. I know that if I plead "GUILTY", the result of my plea is more than just
14 admission or confession of guilt, and that it will result in my conviction. Furthermore,
15 the Court may impose the same punishment as if I had pleaded "NOT GUILTY", stood
16 trial, and been convicted by a jury.

17 12. My lawyer has discussed with me the maximum and minimum, if any,
18 punishments which the law provides, and the various provisions of the Sentencing
19 Guidelines that may apply to me. I understand that the maximum punishment for the
20 offenses charged in Count 1 of the indictment is 120 months of imprisonment, a fine in
21 the amount of \$ 250,000, and a period of 3 year(s) supervised release. I understand that
22 there is a mandatory minimum punishment of _____ months imprisonment for the
23 offense charged in Count 1. I also understand that the maximum period of supervised
24 release which the court may impose is 36 months (if applicable), and that if I violate any
25 condition of supervised release, the release may be revoked and I may be sentenced to a
26 part or all of the term of supervised release imposed in addition to any other term of
27 imprisonment which I have received.

28 I understand that I may be assessed the costs of confinement and/or supervision. I

1 understand that I must pay a penalty assessment of \$100 per count to which I plead (or
 2 \$_____ per count in the case of misdemeanor counts). I also understand that I may
 3 be ordered to pay restitution in an amount determined by the court.

4 I also understand that the court and counsel cannot promise what sentence or
 5 sentencing range will be set and that these calculations will depend upon the Sentencing
 6 Guidelines as they apply to me. I have been advised that the Court may sentence within
 7 the guideline range determined by the US Probation Office, or may depart upward or
 8 downward from the range. However, no promises have been made to me as to the range
 9 or departure.

10 13. If I am on probation or parole in this or any other court, I know that by
 11 pleading guilty here, my probation or parole may be revoked and I may be required to
 12 serve time in that case, which may be consecutive (that is, in addition) to any sentence
 13 imposed upon me in this case.

14 14. I declare that no officer or agent of any branch of government (Federal,
 15 State, or Local) has promised or suggested that I will receive a lighter sentence, or
 16 probation, or any other form of leniency if I plead "GUILTY", except as stated in the
 17 Plea Agreement I have signed, stated on the record in my entry of plea or as follows:

18 All such promises are set forth under the heading "The Government's Promises" in
 19 the Plea Agreement.

20 **(In the space above, insert any promises or concessions**
 21 **made to the defendant or to his/her attorney.)**

22 If anyone else made such a promise or suggestion, except as noted in the previous
 23 sentence, I know that that person had no authority to do it. No one has forced or coerced
 24 me into entering this plea. I enter this plea of my own free will. My willingness to plead
 25 guilty:

26 _____ does not result from prior discussions between my attorney and the
 27 government's attorney.

28 X does result from prior discussion between my attorney and the

1 government's attorney. (If it does, state any factors that influenced you that are
2 not reflected in the plea agreement.)

3 None.
4 _____
5 _____.

6 If a plea agreement has been entered into, please answer the following:

7 15. I have read in full the plea agreement I have entered into with the
8 government or an interpreter has translated the entire agreement into the _____
9 language, and I fully understand it. No one has made any promises to me that are not
10 included in the agreement except:

11 None.
12 _____
13 _____.

14 **(Set forth all promises or state "None" if no other promises made).**

15 16. I believe that my lawyer has done all that a lawyer could do to counsel and
16 assist me, and I am satisfied with the advice and help he/she has given me.

17 17. I know that the court will not permit anyone to plead "GUILTY" who
18 maintains he/she is innocent and, with that in mind and because I am "GUILTY", I
19 respectfully request the Court to accept my plea of "GUILTY" and to have the clerk enter
20 my plea of "GUILTY" as follows:

21 Guilty as to Count 1.
22 _____

23 18. I understand that I may not withdraw my plea unless the plea agreement I
24 have entered into provides otherwise or the court permits me to withdraw my plea.

25 19. My mind is clear. I am not under the influence of alcohol and/or drugs, and
26 I am not under a doctor's care. The only drugs, medicines, or pills that I have taken with
the past seven days are:

27 None.
28 _____

(It none, so state.)

20. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY, AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT AND IN THIS APPLICATION AND IN THE CERTIFICATE OF MY LAWYER WHICH IS ATTACHED TO THIS APPLICATION. IN OFFERING MY PLEA OF "GUILTY", I FREELY AND VOLUNTARILY WAIVE (give up) THE CONSTITUTIONAL RIGHTS GUARANTEED TO ME AS STATED IN PARAGRAPH 7 ABOVE.

21. I waive the reading of the indictment in open court, and I request the court to enter my plea of "GUILTY" as set forth in Paragraph 15 of this application.

22. I understand that all of the above statements will be made in open court under oath and that any false statements may be used against me in a prosecution for perjury or false statement, which in a felony.

Signed by me in open court in the presence of my attorney this 24th day of September, 2007.


Mark Jacobson

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counselor for the defendant, Mark Jacobson, hereby certifies:

1. I have read and fully explained to the defendant and believe he/she fully understands the allegations contained in the indictment of this case, the defenses he/she may have to each and every one of the allegations and the consequences of a plea of "GUILTY", including the pertinent Sentencing Guidelines provisions and maximum and minimum penalties.

2. I believe the defendant fully understands the constitutional rights he/she is waiving and that by entering a plea of "GUILTY", he/she is waiving each and every one of those rights.

3. Nothing has come to my attention which causes me to believe that the defendant lacks the ability to understand anything contained in the attached application or that at the time of entering his/her plea, he/she is under the influence of any drug or alcohol.

4. The plea of "GUILTY" offered by the defendant in Paragraph 15 accords with my understanding of the facts he/she related to me and is consistent with my advice to the defendant.

5. In my opinion, the defendant's waiver of reading of the indictment in open court as provided by FRCrP 10 is voluntarily understandingly made, and I recommend to the court that the waiver be accepted by the court.

6. Defendant has read the Plea Agreement he/she signed in this matter and I believe he/she fully understands it. I certify that no promises have been made to the defendant by the government or myself other than those contained in the Plea Agreement and if there are such other promises, I must state them on the record before my client and the court.

///

1 7. In my opinion, the plea of "GUILTY" offered by the defendant in
2 paragraph 15 of this application is voluntarily and understandingly made. I recommend
3 that the court accept the plea of "GUILTY".

4 Signed by me in open court in the presence of the defendant above-named and
5 after full discussion of the contents of this certificate with the defendant this 24th
6 day of September, 2007.

7
8 
9 Thomas F. Carlucci

ORDER

I find that:

1. The defendant enters this plea of "GUILTY" freely and voluntarily and not out of ignorance, inadvertence, fear, or coercion.
2. The defendant understands and knowingly, freely and voluntarily waives his constitutional rights.
3. The defendant freely and voluntarily executed the within application and understands its contents.
4. The defendant has admitted the essential elements of the crime charged.

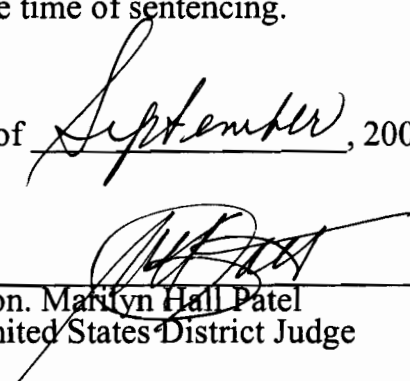
IT IS THEREFOR ORDERED that the defendant's plea of "GUILTY" be accepted and entered as prayed for in the Application and as recommended in the certificate of his lawyer.

IT IS FURTHER ORDERED that the plea agreement entered into in this matter is:

 Accepted at this time.

 ✓ Taken under submission until the time of sentencing.

Done in open court this 24th day of September, 2007.



Hon. Marilynn Hall Patel
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

USA,

Plaintiff,

v.

MARK JACOBSON,

Defendant.

Case Number: CR07-00568 MHP

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 25, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Kyle F. Waldinger
Office of the United States Attorney
450 Golden Gate Avenue
11th floor
San Francisco, CA 94102

Thomas Carlucci
Foley & Lardner LLP
One Maritime Plaza, Sixth Floor
San Francisco, CA. 94111-3409

Dated: September 25, 2007

Richard W. Wieking, Clerk
By: Anthony Bowser, Deputy Clerk